

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

SHAWN DERR, JEFF DERR,

Plaintiffs,

vs.

BOBBY GROVE, ANNETT HOLDINGS,  
Inc..

Defendants.

**4:13CV3078**

**FINDINGS, RECOMMENDATION  
AND ORDER**

Plaintiff Jeff Derr's counsel was granted leave to withdraw on May 5, 2014. He was given until May 23, 2014 to either: (a) obtain the services of counsel and have that attorney file an appearance in this case; or (b) file a statement notifying the court of his intent to litigate this case without the assistance of counsel, and was warned that the failure to do so may result in a dismissal of Plaintiff's claims without further notice.

Prior to withdrawing and on February 27, 2014, counsel for Plaintiffs filed a Suggestion of Death on behalf of Plaintiff Shawn Derr, (Filing No. 34). This court ordered that on or before May 28, 2014, the decedent's successor or representative or the remaining plaintiff shall file a motion for substitution and that absent such substitution, the claims of the decedent would be subject to dismissal. (Filing No. 35).

The court did not receive a response to either order and issued an order on June 3, 2014 giving Jeff Derr until June 23, 2014 to show cause why his claims, and those of his deceased wife, should not be dismissed for want of prosecution. The clerk mailed a copy of that order to Jeff Derr's last known address, but it was returned to the court marked "undeliverable" and "no forwarding address." (Filing No. 42).

Accordingly,

IT IS RECOMMENDED to the Honorable Richard G. Kopf, United States District Judge, pursuant to 28 U.S.C. § 636(b), that Plaintiffs claims be dismissed for want of prosecution without further notice.

The parties are notified that failing to file an objection to this recommendation as provided in the local rules of this court may be held to be a waiver of any right to appeal the court's adoption of the recommendation.

IT IS ORDERED: The trial and pretrial conference in this case are continued pending further order of the court.

Dated this 29th day of July, 2014.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge